MAJLIS PERBANDARAN KLANG

v.

ZAKIYAH SAMAD

FEDERAL COURT, KUALA LUMPUR
STEVE SHIM CJ (SABAH & SARAWAK)
ABDUL MALEK AHMAD FCJ
ABDUL HAMID MOHAMAD FCJ
[CIVIL APPEAL NO: 01-15-2002(B)]
11 NOVEMBER 2003
(4 MARCH 2004)

LOCAL GOVERNMENT: *Rates - Rate of assessment - Whether rates imposed by local authority can be objected to under s. 142(1) Local Government Act 1976 - Whether matter appealable to High Court under s. 145 Local Government Act 1976 - Distinction between capitalisation rate and rate of assessment*

The respondent owns a low-cost flat in the district of Klang. For the year of assessment 2001, she received a notice of assessment from the Klang Municipal Council ('MPK') stating as follows: (a) annual value of holding – RM2,400; (b) rate of assessment – 9%; and (c) assessment payable – RM216. Dissatisfied with the rate of assessment imposed, the respondent filed an objection before MPK under s. 142 of the Local Government Act 1976 ('the LGA'). After a hearing, MPK reduced the annual value of holding from RM2,400 to RM1,920 but maintained the rate of assessment at 9%, thereby reducing the assessment payable to from RM216 to RM172. Dissatisfied still, the respondent appealed to the High Court under s. 145 of the LGA whereupon the learned judge reduced the rate of assessment to 6% on the ground that the rate of 9% was unreasonably high as compared to the rates imposed on equivalent properties by the other local authorities in the state. The learned judge also held that the rates of assessment approved by the state authority under the 2001 Budget Estimates were neither final nor binding as they were purely estimates. Aggrieved, MPK appealed to the Federal Court.

Held (allowing the appeal)
Per Abdul Malek Ahmad FCJ delivering the judgment of the court:

[1] The rate of assessment imposed by MPK is **not** a matter that is appealable to the High Court under s. 145 of the LGA. This is because s. 142(1) of the LGA itself admits of **no** objection with respect to rates of assessment.

The capitalisation rate respecting the annual value of a holding must be distinguished from the rate of assessment thereof. It was obvious that the learned judge had failed to consider s. 129 of the LGA. (p 433 a-f)

*[**Bahasa Malaysia** Translation Of Headnotes*

Responden memiliki sebuah flet kos rendah dalam daerah Kelang. Berhubung taksiran bagi tahun 2001, responden menerima satu notis taksiran dari Majlis Perbandaran Kelang ('MPK') menyatakan seperti berikut: (a) nilai tahunan harta – RM2,400; (b) kadar taksiran – 9%; dan (c) taksiran yang kena dibayar – RM216. Tidak berpuas hati dengan kadar taksiran yang dikenakan, responden memfail bantahan kepada MPK di bawah s. 142 Akta Kerajaan Tempatan 1976 ('AKT'). Selepas pendengaran, MPK mengurangkan nilai harta dari RM2,400 kepada RM1,920 tetapi mengekalkan kadar taksiran pada 9%, sekaligus mengurangkan taksiran yang kena dibayar dari RM216 kepada RM172. Masih tidak berpuas hati, responden merayu ke Mahkamah Tinggi di bawah s. 145 AKT di mana yang arif hakim mengurangkan kadar taksiran kepada 6% atas alasan bahawa kadar 9% adalah tidak munasabah tingginya berbanding kadar-kadar yang dikenakan oleh lain-lain pihak berkuasa tempatan di dalam negeri. Yang arif hakim juga mendapati bahawa kadar-kadar taksiran sepertimana yang diluluskan oleh pihak berkuasa negeri di bawah Anggaran Belanjawan 2001 adalah tidak muktamad dan tidak mengikat kerana ia hanyalah anggaran. Terkilan, MPK merayu ke Mahkamah Persekutuan.

Diputuskan (membenarkan rayuan)
Oleh Abdul Malek Ahmad HMP menyampaikan penghakiman mahkamah:

[1] Kadar taksiran yang dikenakan oleh MPK bukanlah suatu hal yang boleh dirayu ke Mahkamah Tinggi di bawah s. 145 AKT. Ini kerana s. 142(1) AKT sendiri tidak menerima-masuk sebarang bantahan berhubung kadar taksiran. Kadar kapitalisasi bagi nilai tahunan sesuatu harta perlu dibezakan dari kadar taksirannya. Adalah jelas bahawa yang arif hakim gagal menimbang s. 129 AKT.

Case(s) referred to:
Shell Malaysia Trading Sdn Bhd v. Majlis Perbandaran Klang [1988] 3 MLJ 418 ***(dist)***

Legislation referred to:
Local Government Act 1976, ss. 129, 142(1), 145

For the appellant - S Selvarajah (R Thanasegar); M/s Fernandez & Selvarajah
For the respondent - Zulkepli Omar (Mohd Yaacob Bakanali); M/s Lainah Yaacob & Zulkepli

[Appeal from High Court, Shah Alam; Originanting Motion No: MT4-21-81-2001]

Reported by Gan Peng Chiang

JUDGMENT

Abdul Malek Ahmad FCJ:

The respondent is the owner of unit B-7-25, 7th Floor, Flat Cempaka, Persiaran Bukit Raja, Bandar Baru Klang. She received her notice of assessment dated 1 December 2000 from the appellant which stated that the annual value of the holding is RM2,400, that the rate of assessment is 9 per cent and that the assessment is RM216 per annum.

Being dissatisfied with the notice of assessment, the owners of Rumah Pangsa Cempaka and Mawar through their association Persatuan Penduduk Rumah Pangsa Cempaka and Mawar filed an objection against the rate of assessment of 9 per cent pursuant to s. 142 of the Local Government Act 1976, hereinafter "the Act".

The objection was heard on 17 January 2001 where the respondent was represented by her husband who, also on behalf of seven other owners who were present, raised objections only with regard to the rate of assessment.

As a result, the appellant decided on 22 May 2001 to reduce the annual value from RM2,400 to RM1,920, maintain the rate of assessment at 9 per cent and reduce the assessment payable from RM216 to RM172.80.

The respondent appealed to the High Court pursuant to s. 145 of the Act by way of originating motion where she prayed for the following reliefs:

(a) that the rate of assessment of 9 per cent per annum and the annual value imposed on the holding is excessive and ought to be reduced;

(b) that the court fix the annual value for the year 2001 until such period determined by this court and the rate of assessment be determined as it deems fit and proper.

The learned High Court Judge decided to maintain the annual value reduced from RM2,400 to RM1,920 as it was reasonable and not excessive but allowed the appeal in relation to the rate of assessment by reducing it from 9 per cent to 6 per cent on the grounds that it was very high compared to the rates

imposed by other local authorities for similar properties as in Shah Alam it was 4.5 per cent for houses and 5 per cent for flats and in Kuala Lumpur it was 6 per cent.

In his judgment, he relied on s. 142(1)(a) and (e) of the Local Government Act 1976 (hereinafter "the Act"). For ease of reference, the whole subsection is reproduced below:

> 142(1) Any person aggrieved on any of the following grounds:
>
> (a) that any holding for which he is rateable is valued beyorid its rateable value;
>
> (b) that any holding valued is not rateable;
>
> (c) that any person who, or any holding which, ought to be included in the Valuation List is omitted therefrom;
>
> (d) that any holding is valued below its rateable value; or
>
> (e) that any holding or holdings which have been jointly or separately valued ought to be valued otherwise,
>
> may make objection in writing to the local authority at any time not less than fourteen days before the time fixed for the revision of the Valuation List.

He also made reference to *Shell Malaysia Trading Sdn. Bhd. v. Majlis Perbandaran Klang* [1988] 3 MLJ 418 where the court had allowed a reduction on the rate of assessment from 8.25 per cent to 7 per cent per annum on two properties in the same area although there was a difference in their size, business profits and year of construction.

He said that although the rate of assessment had been approved by the State Authority through the 2001 Budget Estimates, they were purely estimates and not final. A case in point was the Shah Alam City Council which was subject to the same Budget Estimates but did not raise their rates. This shows that the Budget Estimates were not binding. The difference becomes more pronounced, he added, considering that the areas managed by the Shah Alam City Council were more developed than those under the appellant.

In these circumstances, although the rate of assessment has been fixed at 9 per cent per annum since 1993, the learned High Court Judge questioned the reasonableness for the appellant to continue fixing the same rate for property described as low cost housing for those with low income and subjected to restricted sale by the Selangor State Authority.

Learned counsel for the appellant argued that a plain reading of s. 142 of the Act clearly shows that the question of the rate of assessment is not an appealable matter. The case relied on by the learned High Court Judge was distinguishable, he added, as in the *Shell Malaysia Trading Sdn. Bhd*. matter, the appeal was on the annual value and in reducing it, the High Court considered the capitalisation rate to determine the annual value. The High Court accepted this capitalisation rate of 7 per cent per annum relied on by the appellant over that of 8.25 per cent per annum relied on by the local authority. Learned counsel submitted that the question of the rate of assessment was not at all an issue. It would appear, he further submitted, that the learned High Court Judge in this instance had confused himself by equating the capitalisation rate with the rate of assessment.

Learned counsel for the respondent referred to s. 129 of the Act which states:

> **129. Division of area and holding for rating purposes.**
>
> For the purpose of this Part, the local authority may divide its area into two or more parts and may in respect of such separate part or parts impose such rate or rates as may be considered just and proper and the local authority may further impose within such part or parts a differential rating in accordance with the actual usage of the holding or part thereof.

It is obvious that the learned High Court Judge never made any reference to s. 129 of the Act. Having considered the arguments, we were inclined to agree with the learned counsel for the appellant that the rate of assessment is not appealable under s. 145 of the Act, which covers appeals by persons aggrieved by the decision of the local authority as regards their objections under ss. 142 or 144 of the Act, as no objection could be made against the rate of assessment under s. 142(1) of the Act in the first place. The facts in *Shell Malaysia Trading Sdn Bhd (supra)* were clearly distinguishable. We accordingly allowed the appeal but made no order as to costs. The deposit was refunded.